UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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R2001-288

SEP 5 2001

In re

: DECISION ON
: PETITION FOR REGRADE
: UNDER 37 C.F.R. § 10.7(c)

MEMORANDUM AND ORDER

, petitions for regrading her answers to questions 5, 22, 23 and 38 of the morning section and questions 21, 30 and 40 of the afternoon section of the Registration Examination held on October 18, 2000. It should be noted that petitioner's arguments were inconsistent with respect to morning question 38 in that the argument referred to morning question number 37, but the text of the argument referred to the material in morning question 38, and the model answer referred to in petitioner's argument was the same as the model answer for morning question 38. Therefore, the argument labeled as relating to morning question 37 is treated as relating to morning question 38. In the alternative, if the argument is treated as relating to morning question 37, the argument is treated as moot for not responding to the question being argued. The petition is denied to the extent petitioner seeks a passing grade on the Registration Examination.

In re

BACKGROUND

An applicant for registration to practice before the United States Patent and Trademark Office (USPTO) in patent cases must achieve a passing grade of 70 in both the morning and afternoon sections of the Registration Examination. Petitioner scored 68. On February 2, 2001, petitioner requested regrading, arguing that the model answers were incorrect.

As indicated in the instructions for requesting regrading of the Examination, in order to expedite a petitioner's appeal rights, a single final agency decision will be made regarding each request for regrade. The decision will be reviewable under 35 U.S.C. § 32. The Director of the USPTO, pursuant to 35 U.S.C. § 2(b)(2)(D) and 37 CFR 10.2 and 10.7, has delegated the authority to decide requests for regrade to the Director of Patent Legal Administration.

OPINION

Under 37 C.F.R. § 10.7(c), petitioner must establish any errors that occurred in the grading of the Examination. The directions state: " No points will be awarded for incorrect answers or unanswered questions." The burden is on petitioners to show that their chosen answers are the most correct answers.

The directions to the morning and afternoon sections state in part:

Do not assume any additional facts not presented in the questions. When answering each question, unless otherwise stated, assume that you are a registered patent practitioner. Any reference to a practitioner is a reference to a registered patent

practitioner. The most correct answer is the policy, practice, and procedure which must, shall, or should be followed in accordance with the U.S. patent statutes, the PTO rules of practice and procedure, the Manual of Patent Examining Procedure (MPEP), and the Patent Cooperation Treaty (PCT) articles and rules, unless modified by a subsequent court decision or a notice in the Official Gazette. There is only one most correct answer for each question. Where choices (A) through (D) are correct and choice (E) is "All of the above," the last choice (E) will be the most correct answer and the only answer which will be accepted. Where two or more choices are correct, the most correct answer is the answer which refers to each and every one of the correct choices. Where a question includes a statement with one or more blanks or ends with a colon, select the answer from the choices given to complete the statement which would make the statement true. Unless otherwise explicitly stated, all references to patents or applications are to be understood as being U.S. patents or regular (non-provisional) utility applications for utility inventions only, as opposed to plant or design applications for plant and design inventions. Where the terms "USPTO" or "Office" are used in this examination, they mean the United States Patent and Trademark Office.

Petitioner has presented various arguments attacking the validity of the model answers. All of petitioner's arguments have been fully considered. Each question in the Examination is worth one point.

Petitioner's arguments for these questions are addressed individually below.

Morning question 5 reads as follows:
5. You filed a U.S. patent application for Pete, obtaining an effective filing date of January 5, 1999, for a legal slot machine, fully disclosing and claiming only one claim as follows. Claim 1. A slot machine comprising: a cylindrical drum mechanically coupled to a motor; an electronic random data generator electrically coupled to the motor; and a push button coupled to the random data generator. You received a non-final Office action dated September 20, 1999. The examiner rejected claim 1 under 35 U.S.C. 102(e) as anticipated by a U.S. patent dated May 4, 1999 to Bud. The examiner stated and pointed out that the Bud patent, filed January 7, 1998, disclosed a slot machine with a cylindrical drum mechanically coupled to a motor; a mechanically spinning random data generator electrically coupled to the motor; and a push button coupled to the random data generator. The examiner further stated, "The examiner takes official notice that it was well known by those of ordinary skill in the art of slot machines, prior to applicant's invention, to use interchangeably either a mechanically spinning, or an electronic random data generator." The examiner did not provide any references to support the official notice. Which of the following timely filed replies to the Office action (compared to each other) is best?

(A) Traverse the rejection arguing that the examiner's use of official notice was improper because the examiner did not provide any references to support the official notice.

(B) Traverse the rejection arguing that Bud's invention was patented after Pete's effective filing date.

(C) Amend Pete's claim to further include a flat screen video monitor display and point out that the newly added feature distinguishes Pete's invention over Bud.

(D) Traverse the rejection arguing that the examiner did not create a prima facie case of obviousness because the examiner did not show why one of ordinary skill in the art of slot machines would be motivated to modify the patent to Bud.

(E) Traverse the rejection arguing that the examiner's rejection under 35 U.S.C. § 102(e) was improper because Pete's claim is not anticipated by the patent to Bud.

The model answer is selection E.

MPEP § 706.02 points out the distinction between rejections based on 35 U.S.C.

§§ 102 and 103. For anticipation under 35 U.S.C. § 102 the reference must teach every aspect of the claimed invention either explicitly or impliedly. (A), (B), (C), and (D) are each incorrect because each reply does not address the lack of anticipation by Bud. (A) is further incorrect. It is proper to take official notice without citing a reference until the practitioner challenges the examiner to provide support. Until seasonably challenged, the examiner would not have to provide support for the official notice. MPEP § 2144.03. (B) is further incorrect because a § 102(e) reference can properly have a patent date after the filing date of an application. (C) is further incorrect because no amendment is necessary. (D) is further incorrect because a prima facie case of obviousness is not necessary in a rejection under 35 U.S.C. § 102.

Petitioner argues that answer (C) is correct. Petitioner contends that the question does not clearly establish that the Bud patent was not available as a 35 USC §102(e) prior art. Petitioner also pointed out that the examiner's language implied a 35 USC §103 obviousness type of rejection, i.e. taught by others. Therefore, answer (C), adding a new feature to the invention, would be a viable strategy to distinguish Pete's invention from Bud's. Petitioner thus concludes, answer (C), should be the most correct answer.

Petitioner's arguments have been fully considered but are not persuasive. Contrary to petitioner's statement that a reply in an attempt to overcome §103 obviousness appears to be a better strategy, overcoming an existing claim by argument affords a broader scope of subject matter protection than narrowing the claim by amendment and is therefore a better strategy where clearly appropriate. Examiner's rejection is asserted to be on 35 USC §102(e) prior art, but the factual situation and the examiner's argument make clear the applied art does not negate novelty and may be successfully challenged. Pete's claim is not anticipated by the patent to Bud's invention pursuant to the criteria of "each and every element as set forth in the claim" and therefore no amendment is necessary. Accordingly, model answer (E) is correct and petitioner's answer (C) is incorrect.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Morning question 22 reads as follows:
22. Which of the following is true?

(A) When the subject matter of an appeal is particularly difficult to understand, a patentability report is prepared by an examiner in order to present the technical background of the case to the Board of Appeals and Patent Interferences.

(B) In those appeals in which an oral hearing has been confirmed and either the Board of Appeals and Patent Interferences or the primary examiner has indicated a desire for the examiner to participate in the oral argument, oral argument may be presented by the examiner whether or not the appellant appears.

(C) If a patent applicant files a notice of appeal which is unsigned, it will be returned for signature, but the applicant will still receive the filing date of the unsigned notice of appeal.

(D) Statements made in information disclosure statements are not binding on an applicant once the patent has issued since the sole purpose of the statement is to satisfy the duty of disclosure before the Office.

(E) None of the above.

The model answer is selection B.

See MPEP § 1209, p.1200-23, "Participation by Examiner." As to (A), see MPEP § 705. As to (C) signature requirement does not apply. 37 C.F.R. § 1.196(b); MPEP § 1205. The notice will not be returned. As to (D), see Gentry Gallery v. Berkline Corp., 134 F.3d 1473, 45 U.S.P.Q.2d 1498 (Fed. Cir. 1998)

Petitioner argues that answer (C) is correct. Petitioner contends that if a patent applicant files an unsigned notice of appeal, the applicant will still receive the filing date of the unsigned notice of appeal. Further, Petitioner points out that MPEP does not state whether an unsigned notice of appeal will or will not be returned, and therefore, it is not possible to judge the truth of that part of answer (C).

Petitioner's arguments have been fully considered but are not persuasive. 37 CFR §1.191(b) explicitly states that the signature requirement does not apply to notice of appeal filed under this section. The unsigned notice will be processed, not returned for signature, and the applicant will receive a filing date of the unsigned notice of appeal. Accordingly, model answer (B) is correct and petitioner's answer (C) is incorrect.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Morning question 23 reads as follows:
23. Mitch and Mac are named inventors on an international application that is filed in the

USPTO Receiving Office, and designates the United States of America. Mac now indicates that he will not sign the Request for the international application. Mitch wishes to proceed with the Request and seeks the advice of their patent agent. Which of the following answers accords with the provisions of the Patent Cooperation Treaty?

(A) Mitch's agent should sign the Request and accompany it with a statement indicating why it is believed that Mac refuses to proceed with the Request.

(B) Mitch should sign the request for himself and also sign on behalf of Mac.

(C) Mitch should sign the request and seek a court order to obtain Mac's signature.

(D) Mitch should sign the Request and accompany it with a statement providing a satisfactory explanation for the lack of Mac's signature.

(E) Mitch should sign the Request and Mitch's agent should sign on behalf of Mac, since he continues to represent Mac.

The model answer is selection D.

The advice is consistent with 37 C.F.R. § 1.425. (A), (B), (C), and (E) are wrong because the advice provided is not consistent with 37 C.F.R. § 1.425. MPEP § 1820, p.1800-16.

Petitioner argues that answer (A) is correct. Petitioner contends that the "their patent agent" used in this question indicates a valid power of attorney from both Mitch and Mac. Therefore, the agent may sign the request on Mac's behalf in compliance with MPEP §1820.

Petitioner's arguments have been fully considered but are not persuasive. Under 37 CFR §1.425, the Request for international applicant can be signed by another applicant if one or more inventors either refuse to sign or cannot be reached after diligent effort. Furthermore, MPEP §1820 states that the request can be signed by at least one available applicant and a statement of explanation must be furnished. In this question, at least Mitch is available. Regardless of whether the agent has a valid power of attorney, an agent signing the Request on behalf of Mitch and Mac while at least one inventor is available is not consistent with MPEP §1820. Contrary to petitioner's statement that the agent may sign the Request and accompany it with an explanation of the refusal of Mac, MPEP §1820 requires a signature from one available inventor. Accordingly, model answer (D) is correct and petitioner's answer (A) is incorrect.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Please answer questions 38 and 39 based on the following information.

Ace Equipment Corp., approaches you with information concerning a pending original U.S. patent application of its chief competitor. A copy of the patent application, which was filed July 9, 1999, and its entire prosecution history was provided to Ace during negotiations concerning the competitor's trade secret technology. The application stands rejected by the examiner on the basis of a prior art patent. A foreign patent application corresponding to the competitor's U.S. patent application had previously published, and Ace was not required to maintain its knowledge of the U.S. application in confidence. Ace is virtually certain that the competitor had used the claimed invention publicly more than one year before the filing date of the patent application and would like to take whatever steps are available to prevent the application from issuing as a patent. However, Ace does not want the competitor to know they oppose issuance of the patent. The competitor does not know that you represent Ace.

Morning question 38 reads as follows:
38. Which of the following would be the best advice from you to Ace?

(A) Recommend initiating a public use proceeding by filing a petition signed by you and serving a copy of the petition on the competitor. The petition would assert that a statutory bar exists that prohibits the patenting of the subject matter of the application, would be supported by appropriate affidavits or declarations, and would describe the subject matter that was in public use sufficiently to enable the examiner to compare the claimed subject matter to the subject matter in public use. The petition would indicate that a copy of the

petition was served on the applicant and would specifically identify the application by serial number and filing date, but would not identify Ace. Any required fee would also be submitted with the petition.

(B) Recommend filing a copy of the competitor's application as a new patent application naming an Ace employee as the inventor. You then submit a statement that the claims have been copied from the competitor's application, and request that an interference proceeding be declared. During the interference proceeding, you can file a preliminary motion under 37 C.F.R. § 1.633(a) in an effort to obtain a ruling that the subject matter is not patentable to the competitor due to the earlier public use.

(C) Inform Ace that because patent applications are maintained in confidence under 35 U.S.C. § 122 and because patent prosecution is conducted ex parte, there is nothing that can be done until the patent issues. Once the patent issues, you can file an anonymous request for re-examination based on the competitor's public use of the invention more than one year before the filing date.

(D) For strategic reasons, recommend waiting to see if the competitor is able to overcome the examiner's rejection. If the patent issues, you can then file an anonymous request for re-examination on Ace's behalf based on the competitor's public use of the invention more than one year before the filing date.

(E) Recommend initiating an inter partes protest by submitting a written protest signed by you. The protest would not provide any information other than identifying the application.

The model answer is selection A.

See 37 C.F.R. § 1.292; MPEP § 720. (B) is unreasonable at least because no employee at Ace can legitimately be identified as an inventor. (C) and (D) are unreasonable at least because re-examination may not be based on public use. (C) is also unreasonable in suggesting that nothing can be done because the application is maintained in confidence by the Patent Office. (E) is incorrect at least because a protest is not conducted as an inter partes proceeding. 37 C.F.R. § 1.291(c); MPEP § 1901.07.

Petitioner argues that answer (D) is correct. Petitioner contends that either answer (A) or (D) is correct depending on the assumption one makes about the nature of Ace's evidence of prior public use by their competitor. Petitioner argues that answer (D) contains the best advice, given that Ace may have a printed publication sufficient to meet the standards for prior art under 37 CFR §1.501.

Petitioner's arguments have been fully considered but are not persuasive. Pursuant to 35 U.S.C. 302, public use may not be a basis for request of reexamination. Petitioner argues that there is no detailed information given in this question concerning whether Ace indeed has the evidence of its competitor's public use of the claimed invention, but if such evidence were available, then (D) would be the best answer. The exam instruction clearly states that "Do not assume any additional facts not presented in the question." There is no reason to assume Ace can show practitioner published evidence. Absent such an unwarranted assumption, a reexamination is unavailable. Accordingly, model answer (A) is correct and petitioner's answer (D) is incorrect.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Afternoon question 21 reads as follows:
21. You are prosecuting a patent application wherein an Office action has been issued rejecting the claims as being obvious over the prior art and objecting to the drawings as failing to illustrate an item that is fully described in the specification and included in a dependent claim. The examiner has required an amendment to Figure 1 to illustrate the item. In preparing a reply to the Office action, you identify several errors in Figure 2 that should also be corrected. Assuming that you make a amendment to the claims and develop persuasive arguments to overcome the obviousness rejection and that the examiner will not object to your desired changes to Figure 2, which of the following actions is likely to lead to the most favorable result?

(A) Submit a reply amending the claims and setting forth your arguments to overcome the obviousness rejection. Submit a separate cover letter for replacement Figures 1 and 2 that incorporate the amendments to the drawings.

(B) Submit a reply amending the claims and setting forth your arguments to overcome the obviousness rejection. In the Remarks portion of the reply, explain the proposed drawing changes and attach copies of Figures 1 and 2 with the changes marked in red for the examiner's review and approval.

(C) Submit a reply amending the claims and setting forth your arguments to overcome the obviousness rejection. In a separate paper, explain the proposed drawing changes and attach copies of Figures 1 and 2 with the changes marked in red for the examiner's review and approval.

(D) Options (A), (B) and (C) are equally likely to lead to the most favorable result.

(E) Options (B) and (C) are equally likely to lead to the most favorable result.

The model answer is selection C.

(A) is not the best answer because drawing changes normally must be approved by the examiner before the application will be allowed. The examiner must give written approval for alterations or corrections before the drawing is corrected. MPEP § 608.02(q). (B) is not the best answer because any proposal by an applicant for amendment of the drawing to cure defects must be embodied in a separate letter to the draftsman. MPEP § 608.02(r). (D) is not the best answer because it incorporates (A) and (B), and (E) is not the best answer because it incorporates (B).

Petitioner argues that answer (B) is correct. Petitioner contends that until approval for drawing changes is received from the Examiner, it is not assured that preparation and submission of a separate letter will be necessary, or that changes submitted in a separate paper will be accepted. Therefore, Petitioner concludes, answer (B), which incorporates all the changes in the Remark portion instead of a separate paper, would be the best choice.

Petitioner's arguments have been fully considered but are not persuasive. As clearly states in MPEP §608.02(r), "Any proposal by the applicant for amendment of the drawing to cure defects must be embodied in a separate letter." This question asks for a reply to the Office Action and amendment for the correction of drawings. Whether the examiner approves the reply or not, it is necessary to submit a separate paper indicating the changes on the drawings pursuant to MPEP §608.02(r). Contrary to petitioner's statement that approval of drawing must precede the submission of drawings in a separate letter to the draftsman for alternation, MPEP §608.02(r) requires applicant to submit his reply accompanied with a separate letter specifically addressing any defects on the drawing for correction. As to petitioner's comments that the examiner needs to see the drawing correction proposal, this is moot because it will occur as a matter of course in the process detailed in selection (C); the proposed drawing correction remains in the application file for the examiner's review. Accordingly, model answer (C) is correct and petitioner's answer (B) is incorrect.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Afternoon question 30 reads as follows:
30. You prepare and file a patent application directed to an invention for improving the safety of research in the field of recombinant DNA. Your client, Inventor Joe, informs you he has licensed exclusive rights to his invention to a major pharmaceutical company. Inventor Joe also informs you that he is aware that another pharmaceutical company, Titan Pharmaceuticals, learned of the invention from a paper he presented at a technical conference, and is preparing to use the technology in its commercial research labs in the United States. Inventor Joe demonstrates that Titan is about to begin practicing the invention by showing you a rigid comparison of Titan's intended activities and the claims of the application. He also informs you that although he is currently in very good health, he is 67 years old and fears he will not be in good health when the invention reaches its peak commercial value. Accordingly, if possible he would like for you to expedite prosecution in the simplest, most inexpensive way. Given the foregoing circumstances, which of the following statements is most correct?

(A) Since the invention relates to improving the safety of research in the field of recombinant DNA, you should recommend filing a petition to make special on that basis.

(B) Since Titan is actually practicing the invention set forth in the pending claims, you should recommend filing a petition to make special on that basis.

(C) You should recommend filing a petition to make special on the basis of Inventor Joe's age.

(D) Statements (A), (B) and (C) are equally correct.

(E) Statements (A), (B) and (C) are each incorrect.

The model answer is selection C.

A petition to make special may be made simply by filing a petition including any evidence showing that the applicant is 65 years of age or more, such as a birth certificate or a statement from the applicant. No fee is required. MPEP § 708.02. Although a petition to make special as indicated in statement (A) is likely available, it would require a petition fee. Id. A petition to make special as indicated in statement (B) is likely not available because such a petition may not be based on prospective infringement. Id. Also,

even if a petition as indicated in statement (B) were available, it would require a petition fee. Thus, neither of these options would be the most inexpensive. (A) also requires a statement explaining the relationship of the invention to safety of research in the field of recombinant DNA research.

Petitioner argues that answer (D) is correct. Petitioner contends that since all answers (A), (B) and (C) are potentially possible, as a responsible patent agent or attorney, one should list each approach and include advantages and disadvantages of each approach for one's client.

Petitioner's arguments have been fully considered but are not persuasive. This question for a recommendation, not a menu of options, from an agent or attorney to file a petition of making special. Answers (A), (B) and (C), are all options to consider to obtain a special status, but that is not what the question asks for. Answer (C) is the best advice of the 3 options because it combines the lowest cost and highest likelihood of success. Although a petition to make special as indicated in statement (A) is likely available, it would require a petition fee. A petition to make special as indicated in statement (B) is likely not available because such a petition may not be based on prospective infringement. Also, even if a petition as indicated in statement (B) were available, it would require a petition fee. Thus, neither of these options would be the most inexpensive. Accordingly, model answer (C) is correct and petitioner's answer (D) is incorrect.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Afternoon question 40 reads as follows:
40. Stan, through a registered practitioner, files an application for a patent. During the prosecution of Stan's patent, in an amendment, the practitioner admitted in his discussion as to "all the claims" of Stan's application, that "the most pertinent available prior art known to the Applicants and their representatives is the Acme Patent, cited by the examiner." Within one year after the patent issues, Stan comes to you and wants to file a reissue to broaden his claims, based on the fact that the Acme patent is not prior art. He has ample evidence to show that he conceived and reduced his invention to practice before the filing date of the Acme patent. Which of the following is true?

(A) Stan should file a reissue application accompanied by a declaration under 37 C.F.R. 1.131 to swear behind the date of the Acme reference. The statement by the registered practitioner, who formerly represented Stan, that the Acme patent was prior art

constituted error without deceptive intent and may be corrected by reissue.

(B) Stan should file a request for reexamination and submit the Acme patent along with evidence in the form of affidavits or declarations showing that the Acme patent is not prior art.

(C) The explicit admission by registered practitioner, who formerly represented Stan, that the Acme patent constituted prior art is binding on Stan in any later proceeding involving the patent.

(D) Since Acme patent was cited by the examiner and not by the registered practitioner, who formerly represented Stan, Stan can not be held accountable for the error. Moreover, the statement by was directed to the pertinence of the prior art and not to the issue of whether the date of the Acme patent could be sworn
behind. Accordingly, the statement has no binding effect.

(E) (A) and (D).

The model answer is selection C.

Admissions by applicant constitute prior art. As explained in Tyler Refrigeration v. Kysor Industrial Corp., 777 F.2d 687, 227 USPQ 845 (Fed. Cir. 1985), the Fed. Circuit found that the district court decided on two separate and independent grounds that the Aokage patent was such prior art. One basis was Tyler's admission of the Aokage reference as prior art before the PTO during the prosecution of the '922 Subera patent. The court found that, in a wrap-up amendment, the Tyler attorney admitted in his discussion as to "all the claims" of the three Subera applications, that "the most pertinent available prior art known to the Applicants and their representatives is the Aokage U.S. Patent 4,026,121 cited by the Examiner" (emphasis added). In view of this explicit admission, the district court's decision was proper and was sufficiently based on clear and convincing evidence. The controlling case law in this court recognizes this principle. See Aktiebolaget Karlstads Mekaniska Werkstad v. ITC, 705 F.2d1565, 1574, 217 U.S.P.Q. (BNA) 865, 871 (Fed. Cir. 1983); In re Fout, 675 F.2d 297, 300, 213 U.S.P.Q. (BNA) 532, 536 (CCPA 1982), and In re Nomiya, 509 F.2d 566, 571, 184 U.S.P.Q. (BNA) 607, 612 (CCPA 1975). Thus, we must affirm the court's decision that the Aokage patent was prior art and as such binding on Tyler. (Here again, we do not pass on the other grounds on which the court concluded that the Aokage was prior art within the meaning of 35 U.S.C. § 102.) Since (C) is true, (D) is not true. Answers (A), (B) and (D) also are not true since the Acme patent can not be sworn behind or otherwise removed as a result of the admission. (E) is not true because (A) and (D) are not true.

Petitioner argues that answer (A) is correct. Petitioner contends that admission of the prior art does not necessarily prevent application for reissue because this question does not state that the practitioner's statement led to narrowing of claims, and the factual pattern does not establish that reissue is not available on the basis of Stan's swearing behind the Acme patent. Petitioner therefore, concludes, answer (A) presents a path of action that Stan should attempt based on the incomplete facts.

Petitioner's arguments have been fully considered but are not persuasive. Although petitioner argues that admission of the prior art does not necessarily prevent application for reissue because this question does not state that the practitioner's statement led to narrowing of claims, and the factual pattern does not establish that reissue is not available on the basis of Stan's swearing behind the Acme patent, admissions by applicant of a reference as prior art are binding on the applicant, as held in Tyler Refrigeration v. Kysor Industrial Corp. The holding in Tyler is not dependent upon narrowing of claims and does not carve out any exception for reissue proceedings as suggested by petitioner. Accordingly, model answer (C) is correct and petitioner's answer (A) is incorrect.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

In re

ORDER

For the reasons given above, no point has been added to petitioner's score on the Examination. Therefore, petitioner's score is 68. This score is insufficient to pass the Examination.

Upon consideration of the request for regrade to the Director of the USPTO, it is ORDERED that the request for a passing grade on the Examination is denied.

This is a final agency action.

Robert J. Spar
Director, Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy